with the clear and earnest disapproval of the courts". *People* v. *Marxhausen, supra,* 567; see *contra, Ferguson* v. *Josey* (1902) 70 Ark. 94, 66 S. W. 345.

STATUTE OF FRAUDS—PART PERFORMANCE—VENDEE'S DONEE IN POSSESSION.—A orally agreed to purchase a dwelling house from B, her nephew, for the purpose of presenting it to C, her niece. At a family party A announced the gift. C went into possession with the consent of A and B, who had incurred considerable expense in regard to the property and title and was selling for less than he otherwise would have, because of his desire to benefit C. A died before anything more was done, and her executors repudiated the contract, pleading that it was not in writing. *Held,* the vendor could have specific performance. *Hohler* v. *Aston* [1920] 2 Ch. 420, 41 Can. L. T. 147.

Where the vendee or lessee enters into possession with the consent of the vendor or lessor, this is such part performance in most jurisdictions as to take the case out of the Statute of Frauds in favor of the vendor or lessor. 1 Ames, *Cases in Equity Jurisdiction* (1904) 279, n. 1, 280, n. 1; Browne, *Statute of Frauds* (5th ed. 1895) § 467. In some jurisdictions possession must be supplemented either by payment of the whole or part of the purchase price, or by improvements, to take the case out of the statute. 1 Ames, *op. cit.,* 287, n. 1. If the vendee's agent goes into possession, the case is equally without the statute. See *Moulton* v. *Harris* (1892) 94 Cal. 420, 421, 29 Pac. 706; *Ala. Cent. R. R.* v. *Long* (1909) 158 Ala. 301, 48 So. 363 (*semble*). The extension of this doctrine to the vendee's donee seems reasonable, especially where the very object of the oral agreement was that the donee should get the property. Assuming the liability of the vendee's estate to the vendor, an interesting question arises whether the gift of the house to the donee was complete so as to entitle her to retain it as against the estate. Equity protects a parole gift of land if accompanied by possession and improvements by the donee. See *Seavey* v. *Drake* (1882) 62 N. H. 393; Browne, *op. cit.,* § 467. The fact that the vendor was selling at a smaller price and had gone to considerable expense in regard to the property because of his interest in the donee ought to inure to the benefit of the donee, so as to put her in the same position as a donee in possession who has made improvements, and hence is entitled to equitable relief.

SUBROGATION—JOINT TORT-FEASORS.—One D. sued the plaintiff city and the defendant E. jointly for injuries resulting from the fact that the defendant E. ran a leader pipe under the sidewalk, causing water to back up thereon and freeze. The defendant E. was insured in the defendant casualty company, which secured an appeal bond from the defendant surety company. The judgment being affirmed, the surety paid D. The city seeks to restrain the surety company from collecting the amount of the judgment paid by it. *Held,* the city must pay one-half of the judgment to the defendant surety company. *City of White Plains* v. *Ellis et al.* (Sup. Ct. Sp. Term, 1920) 113 Misc. 5, 184 N. Y. Supp. 444.

The broad rule was early announced that where one of two or more persons liable *ex delicto* pays the judgment, he cannot sue the other for contribution. *Merryweather* v. *Nixan* (1799) 8 T. R. 186. This has been followed in all jurisdictions with the possible exception of one. See *Palmer* v. *Wick Steam Shipping Co.* (Scot. 1894) 6 Reports 245, 248. Where, however, the action is predicated on negligence, contribution is allowed. *Nickerson* v. *Wheeler* (1875) 118 Mass. 295; *contra, Andrews* v. *Murray* (N. Y. 1861) 33 Barb. 354. The New York Courts, desiring to limit their harsh rule, have said that where a surety for one of several joint tort-feasors pays the judgment, the surety is not in the same position